

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

FLOYD L. WILLIAMSON,

Movant,

vs.

No. 11-1398-JDB-egb

UNITED STATES OF AMERICA,

Respondent.

AGREED REPORT AND RECOMMENDATION

This matter was referred to the undersigned Magistrate Judge, by Chief Judge Daniel Breen to, among other things, conduct an evidentiary hearing upon the Movant, Floyd Williamson's, claims that he was denied effective assistance of counsel by his attorney for his underlying criminal conviction. (Docket Entry ["D.E."] 11, Order, p. 2.) As noted by the Court in this order of referral, the Movant's ineffective assistance of counsel claim hinged upon his assertion that his counsel did not appeal his sentence. (Id., p. 2.)

The undersigned Magistrate Judge, conducted an evidentiary hearing on March 23, 2015. (D.E. 25). The Movant, the Movant's wife, and Javier Bailey, the Movant's counsel on his underlying conviction, all testified at the hearing. Movant and his wife provided testimony that they requested and Javier Baily agreed to file a Notice of Appeal in order to appeal the Movant's sentence. Javier Bailey testified that he did not agree to file a Notice of Appeal, but did remember talking with the Movant and/or his wife after the sentencing. He testified that he was not one hundred percent sure of the content of these conversations. After the hearing, due to the

diligence of the United States Attorney's office, further evidence has come to light indicating that the Movant and/or his wife at least attempted to have Mr. Bailey appeal the Movant's criminal sentence. Therefore, based upon the testimony at the hearing, the telephonic status conference held on April 1, 2015 (*See* D.E. 28), and the agreement of the parties, the undersigned hereby finds that the Movant's defense counsel was in fact ineffective by failing to file a timely Notice of Appeal. Based upon this ineffectiveness, the undersigned recommends that the Court enter an order granting the Movant the right to file a delayed appeal of his sentence.

Respectfully Submitted this 14th day of April, 2015.

s/Edward G. Bryant

UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATIONS MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATIONS. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.

Approved for entry by:

s/Jon A. York

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